

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Ultra PRO International, LLC,)	Case No.: 24-cv-07259
)	
Plaintiff,)	
v.)	Judge: Hon. LaShonda A. Hunt
)	
Zentra, LLC,)	
)	
Defendant.)	Magistrate: Hon. Jeffrey Cole
)	

JOINT INITIAL STATUS REPORT

Ultra Pro International, LLC (“Plaintiff”) and Zentra, LLC (“Defendant”) hereby submit this joint initial status report in response to the Court order dated September 4, 2024 [Dkt. No. 16].

1. The Nature of the Case:

a. Identify the attorneys of record for each party, including the lead trial attorney.

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b. Briefly describe the nature of the claims asserted in the complaint and any counterclaims and/or third-party claims.

Plaintiff has asserted claims of trademark infringement, counterfeiting, trademark dilution, false advertising, and related state law claims for trademark U.S. Registration No. 6,976,683 for the mark TOPLOADER.

There are no counterclaims at this time, as Defendant has not yet been served and therefore has not filed an Answer. Defendant anticipates filing counterclaims with its Answer, if and when it files an Answer.

c. Briefly identify the major legal and factual issues in the case.

The major legal issues anticipated are the validity of Plaintiff's trademarks asserted in this case, ownership/chain of title to the marks, whether the marks should be cancelled as the forthcoming counterclaim requests, liability and damages. The major factual issues anticipated are whether Defendant used confusingly similar marks in commerce to Plaintiff's asserted trademarks, the historic use of the marks in the industry which predated Plaintiff's trademark applications, what the registrants knew about that longstanding prior use at the time of their trademark applications, and whether the registration covers the accused goods at issue.

Defendant also anticipates filing counterclaims for breach of contract related to Plaintiff's interference with Defendant's ability to sell Plaintiff's products.

d. State the relief sought by any of the parties.

Plaintiff is seeking an award of damages, restitution, statutory damages, attorneys' fees, and costs. Plaintiff is also seeking injunctive relief prohibiting Defendant from using any confusingly similar trademark in commerce. Defendant intends to seek an award of damages and cancellation of Plaintiff's trademark.

2. Jurisdiction

a. Identify all federal statutes on which federal question jurisdiction is based

This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1121 as this case is an action for trademark infringement.

3. Status of Service

The Defendant has not yet been served in this case.

4. Consent to Proceed Before a Magistrate Judge

The parties have been advised that they may proceed before a magistrate judge and do not unanimously consent to proceed before the magistrate judge.

5. Pending Motions

a. Identify all pending motions

There are no pending motions.

b. State whether the defendant(s) anticipate responding to the complaint by filing an Answer or by means of motion.

Defendant anticipates responding to the complaint by filing a motion to transfer venue, and/or a motion to stay the case pending the related case of *BCW Diversified, Inc. v. Ultra Pro International, LLC*, No. 1:24-cv-1699, pending in the United States District Court for the Southern District of Indiana.

6. Submit a proposal for a discovery plan

a. Submit a proposal for a discovery plan, including the following information:

Given that service has not yet been perfected and potential settlement discussions between the parties, the parties have not yet engaged in their initial discovery conference pursuant to Rule 26(f). The parties are prepared to engage in the initial conference and submit a

proposed discovery plan if the Court so directs them. However, the nature of the discovery that will be needed is as follows:

i. The general type of discovery needed;

Fact discovery (Depositions and written) is needed to explore: Plaintiff's ownership of the marks and chain of title to its trademark; Use of the subject mark prior to Plaintiff's trademark applications and Plaintiff's knowledge of said use; Defendants use of the subject mark; Consumer confusion caused by the use of the accused mark; Sales; distinctiveness of the accused mark; Plaintiff's policing of the accused mark.

Expert discovery is likely needed to address: Damages; Consumer confusion; and Distinctiveness of the mark.

b. With respect to trial, indicate the following:

i. Whether a jury trial is requested; and

No request for a trial by jury has been submitted at this time.

ii. The probable length of trial.

Any trial would likely last five days.

7. Status of Settlement Discussions

a. Indicate whether any settlement discussions have occurred;

The parties have discussed potential terms for settlement.

b. Describe the status of any settlement discussions; and

There are ongoing settlement discussions between the parties.

c. Whether the parties request a settlement conference.

The parties do not request a settlement conference at this time but will request one if the parties deem it likely to lead to a resolution.

Respectfully Submitted,

Dated: October 3, 2024

By: /s/ Kevin Keener
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